

1 GREGORY G. KATSAS  
 Assistant Attorney General  
 2 JOSEPH P. RUSSONIELLO  
 United States Attorney  
 3 ELIZABETH J. SHAPIRO  
 Assistant Branch Director  
 4 JOEL McELVAIN, DC Bar No. 448431  
 Attorney  
 5 U.S. Department of Justice  
 Civil Division, Federal Programs Branch  
 6 20 Massachusetts Ave., NW  
 Washington, DC 20001  
 7 Telephone: (202) 514-2988  
 Fax: (202) 616-8202  
 8 Email: Joel.McElvain@usdoj.gov

9 Attorneys for Defendants

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 (OAKLAND DIVISION)

12 **HABEAS CORPUS RESOURCE CENTER,** )

13 Plaintiff, )

14 v. )

15 **UNITED STATES DEPARTMENT OF**  
 16 **JUSTICE and MICHAEL B. MUKASEY,**  
 in his official capacity as Attorney General of  
 17 the United States, )

18 Defendants. )

Case No. C 08-02649 CW

**Answer**

Case Management Conference Set  
for Sept. 2, 2008 at 2:00 p.m.

20 The Defendants, the United States Department of Justice and Michael B. Mukasey,  
 21 in his official capacity as Attorney General of the United States, through the undersigned  
 22 counsel, hereby answers the complaint of the Plaintiff, the Habeas Corpus Resource  
 23 Center ("HCRC"), as follows.

24 **First Affirmative Defense**

25 The complaint purports to impose obligations upon the Defendants that exceed  
 26 those imposed by the Freedom of Information Act ("FOIA").  
 27  
 28

**Second Affirmative Defense**

The Plaintiff is not entitled to compel the production of records that are exempt from disclosure pursuant to the deliberative process privilege, the attorney-client privilege, or other privileges or exemptions.

**Third Affirmative Defense**

The Complaint fails to state a claim upon which relief may be granted.

**Fourth Affirmative Defense**

This Court lacks subject-matter jurisdiction over all or part of the Complaint.

**Fifth Affirmative Defense**

The Plaintiff has failed to exhaust its administrative remedies.

**Sixth Affirmative Defense**

Answering the numbered paragraphs of the Plaintiff's Complaint, the Defendants respond as follows:

1. This paragraph contains only a characterization of the complaint, which speaks for itself, and to which no response is required.

2. Deny the first sentence, except to admit that the Plaintiff submitted a FOIA request to the Department of Justice by letter of July 18, 2007. The second sentence contains only a characterization of that letter, which speaks for itself, and to which no response is required. Deny the third sentence.

3. Deny the first and second sentences, except to admit that the Plaintiff submitted comments in response to the proposed regulation, and that in those comments it requested additional time to submit further comments. Deny the third sentence, except to admit that the Department of Justice is in the process of preparing a final regulation.

4. This paragraph contains only conclusions of law and not averments of fact to which a response is required.

5. The Defendants lack sufficient information to admit or deny the allegations of this paragraph.

1           6.     Admit.

2           7.     Admit.

3           8.     This paragraph contains only a characterization of the USA PATRIOT  
4 Improvement and Reauthorization Act of 2005, which speaks for itself, and to which no  
5 response is required.

6           9.     Admit the first and second sentences. Deny the third sentence.

7           10.    Deny the first sentence, except to admit that the Department of Justice  
8 published a notice of proposed rulemaking, and that that notice directed that comments  
9 were to be submitted on or before August 6, 2007. Deny the second sentence, except to  
10 admit that a number of commenters submitted requests for additional time to comment.  
11 The third sentence contains only a characterization of a letter dated August 2, 2007 to the  
12 Department of Justice from Senator Arlen Specter and Senator Patrick Leahy, which  
13 speaks for itself, and to which no response is required. Deny the fourth sentence, except  
14 to admit that, by a notice dated August 1, 2007, the Department of Justice reopened the  
15 comment period for the proposed rule, and directed that comments were to be submitted  
16 on or before September 24, 2007.

17           11.    Deny, except to admit that the Department of Justice published an entry in  
18 the Spring Unified Agenda that stated an estimate that a final rule would be published by  
19 May 2008.

20           12.    Deny, except to admit that, in a letter dated July 18, 2007, Michael  
21 Laurence, the Executive Director of the HCRC, submitted a request for records from  
22 eight components of the Department of Justice, namely, the Office of Justice Programs,  
23 the Office of Legal Counsel, the Office of Legal Policy, the Office of Legislative Affairs,  
24 the Office of Intergovernmental and Public Liaison, the Office of the Attorney General,  
25 the Office of the Deputy Attorney General, and the Office of the Associate Attorney  
26 General.  
27  
28

1           13.    Deny, except to admit that the Plaintiff requested a waiver of processing  
2 fees.

3           14.    The first two sentences contain only characterizations of the letter dated  
4 July 18, 2007, which speaks for itself, and to which no response is required. Deny the  
5 third, fourth, fifth, and sixth sentences.

6           15.    The first sentence contains only perjorative characterizations that are not  
7 material to any matter at issue in this case, and so is denied. The second sentence also  
8 contains perjorative characterizations that are not material to any matter at issue in this  
9 case, and so is denied, except that the Defendants separately aver that the Attorney  
10 General is committed to executing his office in full compliance with his ethical and legal  
11 obligations.

12           16.    Deny.

13           17.    Deny.

14           18.    Deny, except to admit that the Department of Justice allocated the  
15 responsibility to respond to the Plaintiff's FOIA request as follows: the Office of Justice  
16 Programs responded directly with respect to records requested from that component; the  
17 Office of Legal Counsel responded directly with respect to records requested from that  
18 component; and the Office of Information and Privacy responded with respect to records  
19 requested from the remaining six components.

20           19.    Deny, except to admit that the Office of Justice Programs produced records  
21 to the Plaintiff in October 2007.

22           20.    Deny, except to admit that the Office of Justice Programs responded to  
23 telephone communications from the Plaintiff by telephone message in September 2007.

24           21.    Admit.

25           22.    Admit.

26           23.    Deny.

27           24.    Deny.

1           25.    Admit.

2           26.    Deny, except to admit that the Plaintiff submitted a timely appeal of the  
3 October 2007 response that it received from the Office of Legal Counsel.

4           27.    Admit.

5           28.    Deny, except to admit that the Plaintiff submitted a timely appeal of the  
6 January 2008 response that it received from the Office of Legal Counsel.

7           29.    Deny.

8           30.    Deny.

9           31.    Deny, except that the Defendants separately aver that the Department of  
10 Justice is continuing to process the HCRC's request.

11          32.    Deny.

12          33.    This paragraph contains only conclusions of law and not averments of fact  
13 to which a response is required.

14          34.    Deny the first sentence. Deny the second sentence, except to admit that, in  
15 a letter dated September 24, 2007, the Plaintiff submitted comments in response to the  
16 proposed regulation.

17          35.    This paragraph contains only characterizations of the Plaintiff's letter of  
18 September 24, 2007, which speaks for itself, and to which no response is required.

19          36.    This paragraph contains only characterizations of the Plaintiff's letter of  
20 September 24, 2007, which speaks for itself, and to which no response is required.

21          37.    Deny, except that the Defendants separately aver that, in the formulation of  
22 a final rule, the Department of Justice will consider all of the public comments submitted  
23 in response to the proposed rule.

24          38.    Deny.

25          39.    Deny.

26          40.    The Defendants hereby incorporate by reference their responses to  
27 paragraphs 1 through 39 of the Complaint as if fully set forth herein.  
28

1 41. Deny.

2 42. The Defendants hereby incorporate by reference their responses to  
3 paragraphs 1 through 39 of the Complaint as if fully set forth herein.

4 43. Deny.

5 44. The Defendants hereby incorporate by reference their responses to  
6 paragraphs 1 through 39 of the Complaint as if fully set forth herein.

7 45. Deny.

8 46. The Defendants hereby incorporate by reference their responses to  
9 paragraphs 1 through 39 of the Complaint as if fully set forth herein.

10 47. Deny.

11 48. The Defendants hereby incorporate by reference their responses to  
12 paragraphs 1 through 39 of the Complaint as if fully set forth herein.

13 49. Deny.

14 50. The Defendants hereby incorporate by reference their responses to  
15 paragraphs 1 through 39 of the Complaint as if fully set forth herein.

16 51. Deny.

17 52. The Defendants hereby incorporate by reference their responses to  
18 paragraphs 1 through 39 of the Complaint as if fully set forth herein.

19 53. Deny.

20 54. The Defendants hereby incorporate by reference their responses to  
21 paragraphs 1 through 39 of the Complaint as if fully set forth herein.

22 55. Deny.

23  
24 The Defendants specifically deny all allegations in the Complaint not otherwise  
25 answered herein. In addition, the Defendants deny that the Plaintiff is entitled to the  
26 relief requested in the prayer for relief, or to any relief whatsoever.

1 WHEREFORE, the Defendants request that the Plaintiff's prayer for relief be  
2 denied, that this action be dismissed, and that the Defendants be awarded their costs and  
3 such other relief as may be appropriate.

4 Respectfully submitted,

5 GREGORY G. KATSAS  
6 Assistant Attorney General

7 JOSEPH P. RUSSONIELLO  
8 United States Attorney

9 /s/ Joel McElvain  
10 ELIZABETH J. SHAPIRO  
11 Assistant Branch Director  
12 JOEL McELVAIN  
13 Attorney  
14 U.S. Department of Justice  
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19 Fax: (202) 616-8202  
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21 Attorneys for Defendants  
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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2008, I electronically filed the foregoing Answer with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

/s/ Joel McElvain  
JOEL McELVAIN